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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,506	02/26/2004	David Wender	16103-105002	7427
65989	7590	03/03/2010		
KING & SPALDING 1185 AVENUE OF THE AMERICAS NEW YORK, NY 10036-4003			EXAMINER TINKLER, MURIEL S	
			ART UNIT 3691	PAPER NUMBER
			NOTIFICATION DATE 03/03/2010	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptomailnyc@kslaw.com

### Office Action Summary

**Application No.**

10/788,506

**Applicant(s)**

WENDER, DAVID

**Examiner**

MURIEL TINKLER

**Art Unit**

3691

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 and 36-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 and 36-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This application has been reviewed. The status of the claims are as follows: claims 1-32 and 36-68 were previously pending; claims 1, 2, 4, 12-15, 17, 20, 23, 25, 30, 36-39, 41-44, 47-53, 55, 58-60 and 62-68 have been amended; no additional claims have been cancelled or added; therefore, claims 1-32 and 36-68 are currently pending and have been examined. The rejection(s) and objection(s) are as follows.

### ***Response to Amendment***

1. The amendments to claims 11, 18 and 19, entered on April 23, 2009 were previously reviewed against the specification. The amendments to these claims consisted of the following terminology: 'the option spread is at least one selected from the group consisting of'. This terminology implies that there is a group or selection process that lists all selections within a group and allows the user to pick from said selection. The Examiner has found no such evidence in the specification. The specification does disclose a process for determining a type of option, but there is no selection from a specific group (see the specification of this application, figure 9 and page 15 (line 17) through page 16 (line 12)). Similar issues also apply to newly added claims 47, 53 and 54. Furthermore, the Applicant has made no effort to correct these issues. Therefore, the 35 USC 112, first paragraph rejections stands.

***Response to Arguments***

2. Applicant's arguments, see pages 25-26, filed October 20, 2009, with respect to 35 USC 101 Rejection(s) have been fully considered and are persuasive. The Applicant has amended the claims to overcome the previously stated 35 USC 101 Rejection.

Therefore, the 35 USC 101 Rejection(s) of claims 1-32 and 36-67 has been withdrawn.

3. Applicant's arguments, see page 28, filed October 30, 2009, with respect to the Double Patenting Rejection of claims 23 and 20 have been fully considered and are persuasive. The Double Patenting Rejection of claims 20 and 23 has been withdrawn.

4. Applicant's arguments, see page 24, filed October 20, 2009, with respect to the rejection(s) of claim(s) 1-32 and 36-68 under 35 USC 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Lange and Melkomian et al. (US PG Pub. 2002/0128952). The Applicant's representative telephoned the Examiner's supervisor to argue the rejection. According to the Interview Summary from the Examiner's supervisor, it appears that there was an agreement that the Lange reference is not a valid 102(b) reference because Lange does not disclose a first and second optioncode. It is completely unclear to the Examiner how an option can be placed on an exchange without an optioncode/identifier. As disclosed in the specification of this very application, it is stated that, "an optioncode is generally a two letter code designated by the Exchange on which the option trades" (see page 2, lines 1-5). The Applicant also goes on to state (within the same paragraph) the New York Mercantile Exchange uses such a code system. If the Exchange designates the

"optioncode" then why would it be necessary for the Lange reference to either provide their own "optioncode" or explicitly state the use of an optioncode, if in fact Lange discloses the use of an Exchange. And, Lange discloses the use of an "exchange" in paragraphs [0035]-[0036], [0040] and [0043] among other places. In any case, the Examiner has added the Melkomian et al. (US PG Pub. 2002/0128952) reference which explicitly states the use of options and options spreads within the New York Mercantile Exchange. Therefore, as described by the Applicant's specification, said options are given optioncodes by said exchange.

***Claim Rejections - 35 USC § 112***

**35 USC 112, 1<sup>st</sup> paragraph**

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 11, 18, 19, 47, 53 and 54 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The amendments to these claims consist of the following terminology: 'the option spread is at least one selected from the group consisting of'. This terminology implies that there is a group or selection process that

lists all selections within a group and allows the user to pick from said selection. The Examiner has found no such evidence in the specification. The specification does disclose a process for determining a type of option, but there is no selection from a specific group (see the specification of this application, figure 9 and page 15 (line 17) through page 16 (line 12)). Furthermore, the specification of this application does not disclose any sort of "selection" of a type of option spread. In fact, it is the purpose of this invention to determine the type of option spread. Additionally, it is unclear who or what is performing this "selecting" (see the 35 USC 112, second paragraph rejection below).

35 USC 112, 2<sup>nd</sup> paragraph

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 11, 18, 19, 47, 53 and 54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The amendments to these claims consist of the following terminology: 'the option spread is at least one selected from the group consisting of'. This terminology implies that there is a group or selection process that lists all selections within a group and allows the user to pick from said selection. The Examiner has found no such evidence in the specification. The specification does disclose a process for determining a type of option, but there is no selection from a specific group (see the specification of this application, figure 9 and page 15 (line 17) through page 16 (line 12)). It is unclear: how this group is selected;

where this group is displayed so that it may be selected; and who or what selects this group.

9. Claims 23-32 and 58-67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claims 23 and 58 disclose: displaying a set of grids on a display device, each grid representing a single optioncode and comprising a set of selectable boxes; receiving a selection of a sequence of boxes, each selection in the sequence comprising optioncode, a contract, a strike, and a callput. It is unclear whether the optioncode in the second limitation is the same optioncode as recited in the first limitation. The Examiner will assume that both optioncodes are the same. Appropriate correction is required: replace optioncode in the second limitation with 'the optioncode'. The Examiner suggests that if they are the same option code then, "comprising optioncode" should be changed to "comprising the option code" or "comprising the single optioncode" because it is unclear whether "comprising optioncode" is the same as "a single option code". However, if they are two different optioncodes the, "comprising optioncode" should be changed to "comprising a second option code" and "the optioncode" should be changed to either "the single optioncode" or "the second optioncode". Additionally, the Examiner points out the same problem with "selectable boxes" and "sequence of boxes". Are these the same or different boxes?

10. Claims 28-30 and 63-65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention. These claims discuss the process of instructing a sign change which reverses the sign of the provided quantity in the process of claims 223 and 68. This sign change does not take place for claims 23 and 58, as explicitly stated in the specification on page 14, "It should be noted that if the option count was not greater than 1 in step 508, the invention would ignore the input in step 510." The option count is not greater than zero because, as shown in claims 23 and 58: each grid represents a single option code and a set of selectable boxes; the user receives a selection of boxes comprising [the same] optioncode. Therefore, it is unclear how this sign change can take place, when it is explicitly stated in the specification that this sign change does not take place.

11. Claims 11, 18, 19, 47, 53 and 54 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: who or what are performing the "selecting" within these method claims.

### ***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



13. Claims 1-32 and 36-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lange (US 2002/0147670) in view of Melkomian et al. (US PG Pub. 2002/0128952), hereafter referred to Lange and Melkomian respectively.

14. Regarding claims 1, 11, 12, 19, 20, 23, 36, 46, 47, 54, 55 and 58, Lange discloses: offering a digital option spread in paragraph 797; that option selling is common place and well known in the art in paragraph 803; determining the type of option spread based on comparing a first option spread to a second option spread (that defines a combination of buy/sell indicators) in paragraph 783; the use of computer program code in paragraph 319 and 320.

15. While, Lange discloses the use of an "exchange" in paragraphs [0035]-[0036], [0040] and [0043] among other places. Lange does not disclose the use of the New York Mercantile Exchange, as disclosed in the specification of this application. The New York Mercantile Exchange assigns an "optioncode" to an options. The Examiner has added the Melkomian et al. (US PG Pub. 2002/0128952) reference which explicitly states the use of options and options spreads within the New York Mercantile Exchange. Therefore, as described by the Applicant's specification, 'said options' are given optioncodes by said exchange. Additionally, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to include the use of "optioncodes" within the Lange reference because it would allow the user to identify the options available to be traded.

16. Regarding claims 2, 13, 37 and 48, Lange discloses the calculation of an option spread in paragraph 806.
17. Regarding claims 3, 14, 38 and 49, Lange discloses naming an option spread (binary/digital options) in paragraph 33.
18. Regarding claims 4, 5, 15, 25, 39, 40, 50 and 60, Lange discloses the use of sensitivity analysis calculations in paragraph 745 and 866.
19. Regarding claims 6, 16, 41 and 51, Lange discloses the act of displaying the price and name in figure 2 (elements 100, 160, 170, 190 and 200).
20. Regarding claims 7-9, 17, 42-44 and 52, Lange discloses sending information to the display device in figure 6.
21. Regarding claim 10, 18, 45 and 53, Lange discloses an input device in figure 2 (element 240).
22. Regarding claims 21, 26, 56 and 61, Lange discloses a display with an x and y axis in figure 6 (element 503).
23. Regarding claims 22 and 57, Lange discloses: the use of real-time in paragraph 44 and varying time periods in paragraph 110; and, the use of software in paragraphs 748, 817 and 996.
24. Regarding claims 24 and 59, Lange discloses the act of receiving a positive or negative change in quantity in paragraphs 623 and 758.
25. Regarding claims 27 and 62, Lange discloses saving an option spread to a watch list (HTML interface) in figure 6.

26. Regarding claims 28-30 and 63-65, see the rejection of claim 23 above. More specifically, these claims discuss the process of instructing a sign change which reverses the sign of the provided quantity in the process of claims 223 and 68. This sign change does not take place for claims 23 and 58, as explicitly stated in the specification on page 14, "It should be noted that if the option count was not greater than 1 in step 508, the invention would ignore the input in step 510." The option count is not greater than zero because, as shown in claims 23 and 58: each grid represents a single option code and a set of selectable boxes; the user receives a selection of boxes comprising [the same] optioncode.

27. Regarding claims 31, 32, 66 and 67, Lange discloses that market based hedging is well known in the art in paragraph 11 and the use of hedging with respect to stock price in paragraph 216.

28. Regarding claim 68, Lange discloses: a computer system (figure 1); a processor (paragraph 71); computer readable medium according to claim 68 (see the rejection of claim 58 above); and, the processor configured to execute program code stored on said computer readable medium (see paragraph 71).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MURIEL TINKLER whose telephone number is

(571)272-7976. The examiner can normally be reached on Monday through Friday from 6:30 AM until 3 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571)272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Muriel Tinkler/  
Examiner, Art Unit 3691